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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

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THE PEOPLE,

Plaintiff and Respondent,

v.

CHENG VANG,

Defendant and Appellant.

C063938

(Super.Ct.No.  
CM031483)

As a result of the lawful discovery of items during a traffic stop, defendant Cheng Vang entered negotiated pleas of no contest to being a convicted felon in possession of a gun and to possessing methamphetamine for sale (Pen. Code, § 12021; Health & Saf. Code, § 11378), and other charges and enhancements were dismissed. He was sentenced to a prison term of three years eight months, with 138 days of presentence custody credit and 68 days of conduct credit.

Defendant's sole contention on appeal is that the January 2010 amendments to Penal Code section 4019 (hereafter section 4019) apply retroactively to his pending appeal, entitling him to additional

presentence conduct credits. We agree and shall modify the judgment accordingly.

#### DISCUSSION

The amendments to section 4019 apply to all appeals, including defendant's, pending as of January 25, 2010. (See *In re Estrada* (1965) 63 Cal.2d 740, 745 [amendment to statute lessening punishment for crime applies "to acts committed before its passage provided the judgment convicting the defendant of the act is not final"]; *People v. Doganiere* (1978) 86 Cal.App.3d 237; *People v. Hunter* (1977) 68 Cal.App.3d 389, 393.) Defendant is not among the prisoners excepted from the additional accrual of credit. (Pen. Code, § 4019, subds. (b)(2), (c)(2); Stats. 2009, 3d Ex. Sess., ch. 28, § 50.) Thus, having served 138 days of presentence custody, he is entitled to 138 days, not 68 days, of presentence conduct credits.

#### DISPOSITION

The judgment is modified to reflect that defendant is entitled to 138 days of presentence custody credits and 138 days of presentence conduct credits. As so modified, it is affirmed. The trial court is directed to amend the abstract of judgment to reflect this modification and to forward a copy of the amended abstract to the Department of Rehabilitation and Corrections.

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SCOTLAND, P. J.

We concur:

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RAYE, J.

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HULL, J.